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Attachment 2

DISCRETIONARY PERMITS: SUBSTANTIAL CONFORMANCE GENERAL STAFF REVIEW GUIDELINES

BACKGROUND:

At the time a discretionary project is approved by the City, it is acknowledged by both the Development Services Department and the developer that the plans being approved are “conceptual plans.” The plans are of sufficient detail to show department staff and citizens what the project will be and how it will look. However, the developer, because of cost and the uncertainty of whether the project will be approved, does not prepare construction documents for the discretionary review phase of the project.

After a project is approved, a developer may find it necessary to modify the project. These guidelines some give guidance as to the limits that such projects can be modified without requiring a formal amendment to the project.

A FINDING OF SUBSTANTIAL CONFORMITY CANNOT BE MADE IF CHANGES OR MODIFICATIONS TO A PROJECT ARE INCONSISTENT WITH FACTORS OR ISSUES SPECIFICALLY ADDRESSED BY STAFF IN A MEMORANDUM TO THE FILE BASED ON INFORMATION PRESENTED TO THE DECISION-MAKER.

GENERALLY, THE MORE SIGNIFICANT THE CHANGE, THE MORE DIFFICULT IT WILL BE TO DETERMINE SUBSTANTIAL CONFORMITY. CONVERSELY, IT CANNOT BE ASSUMED THAT SEEMINGLY MINOR CHANGES WILL BE FOUND IN SUBSTANTIAL CONFORMITY IF IT WAS A SPECIFIC ISSUE IDENTIFIED BY THE DECISION-MAKER AS AN AREA OF CONCERN AT THE HEARING.

DETERMINATION:

Following are issues to be considered and evaluated when reviewing a Substantial Conformity Review Application.

Land Use - No change in land use (permitted uses) from that which was approved can be found to be in substantial conformity. Unless permitted uses section of permit specifies uses permitted by the underlying zone, only those uses identified on the permit are to be allowed.

Intensity of Development - No increase in density for residential projects may ever be granted

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under substantial conformance. A minor decrease in the residential density of a project **may** be considered, so long as it remains consistent with the minimum designations of the adopted policies and plans and does not affect the sizing of public facilities within the Community. The issues of concern here are consistency with the environmental document and permit which typically only analyze and permit maximum densities, and the ability to size and finance public facilities based on the approved density.

For commercial and industrial projects, no increase in Floor Area Ratio (FAR) or coverage may be granted inconsistent with a *permit* or exhibits. Only a minor decrease in FAR or coverage (generally no more than 10 percent--so long as it does not affect the sizing of public facilities within the Community) can generally be found to be in substantial conformance.

Applicants who elect not to build to their approved intensity of development and who wish to finish a project later, must have a permit which stipulates a phasing plan. If there is no phasing plan approved as a part of the project, it is necessary to amend the permit.

The wholesale substitution of one type of housing product for another (e.g., going from an approved multi-family apartment building to an attached town-house design) is not generally in substantial conformance. Such a change is quite complex and would effect several other of the design issues discussed here.

Site Design - Site design changes can run the gamut from minor siting changes to a building or buildings to flipping the footprint of one or more buildings or relocating parking, driveways, landscaping or some other approved element of a project.

This can be the most difficult of issues to evaluate. It could be possible to flip the footprint of an entire shopping center and have no adverse results when doing the same for a single-family residence would adversely affect adjacent properties and be considered inappropriate without an amendment to the permit.

Site design changes proposed for an approved project should not significantly alter nor affect the other issues discussed here. Coordination of SCR review with other departments/divisions is generally necessary when there are site design changes proposed. Consultation with the Community Planning Group is critical in significant site design changes to ensure that the expectations of the Community during the original approval process are upheld. In many cases the modified site design is a result of more refined site studies, construction plans or specific tenant needs.

Parking/Circulation - Typically, only minor changes to an approved project's parking and *traffic* circulation should be considered or approved under substantial conformity review.

Architecture - Review of proposed changes to the architectural style of an approved project should weigh the significance that the department and/or the decision-maker(s) placed on the appearance/architectural style of the project when it was approved. Where findings of

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neighborhood compatibility were required to be made, even minor changes to architectural elements or materials could be considered significant. Though the City does not regulate private views, changing a flat roof structure to a gabled roof could affect neighbors and lead to some controversy over why the design change occurs after the public hearing.

The overriding goal should be that the modified plans result in a project that is “better than or equal to” the conceptual plans that were approved. This is an aesthetic determination, not an economic one.

Accessory Uses/Structures - Proposed Changes to a project’s accessory uses or structures need to be reviewed within the context of the significance given to them in the course of approval. Applicants cannot propose an Olympic size swimming pool and then convert the area to an open grassy space. However, substituting facilities of a similar nature and size may be acceptable. The addition of accessory uses/structures needs to consider whether the use or structure is truly accessory in nature to the approved use and project design and how it physically fits into the project.

Environmental Documents

No projects can be found to be in substantial conformance if it exceeds the elements described and analyzed in an environmental document. Increased density, grading, traffic, biological impacts, etc., needs to be closely scrutinized and evaluated.

Landscaping

The overriding principle is that wholesale modification in the overall amount of landscaping should not be approved. Minor changes may be appropriate but these must be viewed in the context of the full landscape program for the project. Eliminating significant mounts or types of landscape treatment only because of the cost is not substantial conformance.